

REMARKS

Amendments to the Claims

Applicant has amended claims 62, 100 and 109 solely to correct inadvertent typographical errors.

Applicant has canceled claim 111, which was a duplicate of claim 109.

In sum, claims 51-110 and 112-118 are pending.

Interview Summary

Applicant appreciates the courtesy provided by the Examiner during an informal telephone interview with Daniel J. Hulseberg, Attorney for Applicant, and Steve Kenny on September 7, 2006. In accordance with § 713.04 of the MPEP, Applicant sets forth the substance of the interview as follows.

During the interview, the participants discussed the pending claims, with particular attention directed to independent claims 51 and 98. The prior art of record was discussed, including the Examiner's interpretation of U.S. Patent No. 5,685,453 to Goins. During the interview, the Examiner suggested possible claim amendments to distinguish over the cited prior art, although no indication was provided that such amended claims would be allowed if formally entered. Applicant forwarded proposed amended claims to the Examiner on September 8, 2006, but no final agreement was reached with respect to the rejected claims.

THE OFFICE ACTION

Applicant appreciates the acknowledgement by the Examiner that claims 74-97 are directed to allowable subject matter.

The Rejection Under 35 U.S.C. § 102(b)

Claims 98-118 Are Not Anticipated By Goins

The Examiner has maintained the rejection of claims 98-118 as being anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,685,453 issued to Goins

("Goins"), for the reasons previously set forth in the Office Action dated March 13, 2006. Applicant respectfully traverses this rejection.

To support a rejection under 35 U.S.C. § 102(b), each and every feature of the rejected claim must be disclosed in a single prior art reference. Contrary to the suggestions of the Examiner, Goins does not disclose several limitations of the claimed invention.

Independent claim 98 of the present application is directed to a base for a food container and explicitly recites, *inter alia*, that the base comprises "a plurality of upwardly extending first rib units, which include a first outward rib projecting away from the interior and a first inward rib projecting towards the interior."

In contrast to the base as claimed in claim 98, Goins discloses a cover for engaging a base member, wherein the cover includes a rib structure that consists solely of outwardly projecting ribs. Goins does not ever disclose a base having a side wall, let alone a plurality of first and second ribs as claimed. Furthermore, even the cover of Goins does not include both outwardly and inwardly projecting ribs, within the same rib unit, as claimed.

Indeed, as stated in column 3, lines 4-15, the lid member of Goins "is comprised of at least first and second generally vertical and outwardly directed ribs **26** and **28**," and furthermore, "the outermost portions **30** of the first ribs **26** and the outermost portions **31** of the second ribs **28** are approximately the same radial distance from the central vertical axis of the cover **10**." Therefore, both of the ribs **26** and **28** of the cover of Goins project outwardly, in direct contrast to the Examiner's interpretation. The Examiner interprets the inwardly projecting rib to include gussets **42**; however, these gussets necessarily project outwardly (and downwardly) in order to interconnect with the outwardly projecting ribs **26** and **28**, as best illustrated in Fig. 1a. Applicants respectfully submit that interpreting the gussets to define an inwardly projecting rib is in contrast with the teaching of the specification and, *inter alia*, Fig. 1a.

Moreover, claim 98 further recites that the "plurality of first rib units extending from the side wall into the bottom a first distance." Goins does not disclose or suggest first rib units extending into the bottom a first distance. Rather, Goins discloses that "the side wall **16** [of the cover], encompassing and extending downward from the

peripheral shoulder **24** is comprised of at least first and second generally vertical and outwardly directed ribs **26** and **28** that repeat in a predetermined rib pattern.” Goins, col. 3, lines 3-6. The side wall **16**, as specified by Goins, clearly does not encompass the top wall **14**, and thus does not include rib units extending from the side wall into the bottom a first distance.

Goins promotes the “unique shape of the side wall **16**”—with its “first and second generally vertical and outwardly directed ribs **26** and **28**”—as what differentiates it from thin gauge plastic covers. Goins, col. 3, lines 38-40 and line 3-6. Applicant submits that the “unique shape” of the cover of Goins is different and distinct from the base of the present invention as claimed, as evidenced at least by the lack of inwardly projecting ribs, and any rib structure extending into the bottom a first distance, as discussed above. For at least these reasons, Applicant submits that Goins does not teach each and every feature of the present claims.

Moreover, in contrast to Applicant’s invention as claimed in claim 98, Goins does not ever disclose a base for a food container having a rib structure. Applicant respectfully submits that the Examiner’s interpretation of the lid of Goins as being capable of being used as a base, if turned upside-down and used like a bowl, is in direct contrast to what is in fact specifically disclosed by Goins. Goins explicitly recites the base as member **12**, and not member **10**, as construed by the Examiner. Further, Goins explicitly discloses significant structure in the base member **12** such as a raised dome **54**, and ribs or grooves (**60**, **62**) formed in the bottom of the base member that “minimizes movement or slipping of the product accommodated within the food packaging container.” Goins, col. 5, lines 1-3. Accordingly, the base **12** of Goins has a significant and deliberate structure that is distinct from the cover **10**. Therefore, the Examiner’s interpretation of the Goins cover **10**, as capable of serving as a base member, negates the explicit objective of Goins in that the cover **10** does not contain any of the structure (*i.e.*, raised dome **54**, or ribs **60**, **62**) specifically provided for the base; and the base does not include the structure intended for the cover. Consequently, the use of the cover **10** as a base, as suggested by the Examiner, would defeat the aim of Goins.

The Examiner acknowledges that inverting the cover and using it as a base contradicts the disclosure of Goins. However, the Examiner contends that inverting the

lid does not defeat Goins, since the aim of Goins is to store a product and the container stores a product in either the upright or inverted configuration. Applicant respectfully disagrees. The Examiner simply cannot interpret disclosure in such a way as to be contrary to the teaching of the specification and the description of the figures therein. Nowhere in Goins is it suggested to invert the food packaging cover and use it as base. The aim of Goins is to provide a cover—"which facilitates application of a label thereto while maintaining structural strength"—and a base in which to store a product without slippage. Goins, col. 1, lines 6-8. And, the need filled by Goins is "a new and improved food packing cover." Goins, col. 1, lines 41-42. The only element of the invention of Goins considered or contemplated to be used as a base is, in fact, the base 12.

Accordingly, the Goins reference does not disclose or teach each of the limitations claimed, and therefore does not substantiate a 35 U.S.C. § 102(b) rejection of the invention as claimed. As such, Applicant respectfully requests that the Examiner withdraw the rejection set forth above.

Because Goins does not disclose or suggest every feature as claimed, Applicant submits that claims 98-118 are not anticipated under 35 U.S.C. § 102(b). Furthermore, dependent claims 99-110 and 112-118 are allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claims 99-107 recite additional features of the configuration of the first and second ribs, and claims 108-110 and 112-118 recite features of a third rib unit.

Accordingly, Applicant respectfully requests that the rejection of these claims be withdrawn.

The Rejection Under 35 U.S.C. § 103(a)

The Claims Are Not Obvious Over Goins In View Of Lucas

The Examiner has maintained the rejection of claims 51-73 under 35 U.S.C. § 103(a) as being unpatentable over Goins in view of U.S. Patent No. 5,441,166 issued to Lucas ("Lucas"), for the reasons made of record in the prior Office Action dated March 13, 2006. Applicant respectfully traverses this rejection.

"To establish a prima facie case of obviousness ... there must be some suggestion or motivation, either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations.” MPEP § 2143.

Applicant respectfully submits that neither Goins nor Lucas disclose or suggest, alone or in combination, the base of the pending claims.

Independent claim 51 of the present application is directed to a base for a food container and specifics, *inter alia*, that the base comprises “a plurality of first rib units formed in the sidewall upwardly extending from the bottom, each of the plurality of first rib units including a first outward projecting rib extending away from the interior and a first inward projecting rib extending towards the interior, the first inward projecting rib being formed within the first outward projecting rib.”

The Examiner contends that Goins discloses the claimed invention except for the second inward projecting rib being shorter than the first inward projecting rib. Applicant agrees that Goins does not disclose a base having a second rib being shorter than a first rib. Indeed, and as discussed above, Goins does not ever disclose inwardly projecting ribs, let alone an inward projecting rib formed within an outward projecting rib as claimed. Instead, as plainly stated in column 1, lines 46-54 Goins discloses that “the side wall contains at least first and second generally vertical and outwardly directed ribs that repeat in a predetermined pattern.” Goins is silent with respect to an inward projecting rib formed within an outward projecting rib. Hence, and as acknowledged by the Examiner, Goins can not disclose inwardly projecting ribs of different vertical heights within the sidewall.

In an attempt to supply a missing feature of the base of the pending claims, clearly not disclosed by Goins, the Examiner relies on Lucas, which is directed to a dome cover. Applicant submits that the Examiner’s reliance on Goins, together with Lucas, to establish a *prima facie* case for obviousness is without merit, because Lucas does not remedy the deficiencies of Goins. For example, Lucas does not disclose both inwardly and outwardly projecting ribs, let alone an inwardly projecting rib formed within an outwardly projecting rib, as recited in claim 51. Indeed, and as with Goins, Lucas does not ever disclose a base with a side wall having first and second ribs.

Accordingly, neither Goins nor Lucas, whether considered separately or in combination, disclose or suggest each and every feature of independent claim 51 in that neither reference discloses both inwardly and outwardly projecting ribs, or an inwardly projecting rib formed within an outwardly projecting rib.

Because Lucas does not remedy the deficiency of Goins, there can be no motivation to combine the references to achieve the base of the pending claims. Even if the combination were proper, Applicant submits that the combination of references does not establish a *prima facie* case of obviousness as required under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully submits that independent claim 51 is allowable over the prior art of record. Because independent claim 51 is allowable, claims 52-73 are also allowable at least for depending therefrom.

In addition, dependent claims 52-73 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claims 52-61 and 71-73 recite additional features of the configuration of the first and second ribs, and claims 62-70 recite features of a third rib unit.

For at least these reasons, Applicant submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests that the rejection of claims 51-73 under 35 U.S.C. § 103(a) be withdrawn.

Formal Request for Interview

Applicant submits that the present application is in condition for allowance at least for the reasons set forth herein. If the present application is not considered to be in condition for allowance by the Examiner, and pursuant to M.P.E.P. § 713.09, Applicant requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney, Daniel J. Hulseberg, may be reached by telephone at (212) 408-2594 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

Conclusion

On the basis of the foregoing Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that the Examiner enter this Response, and withdraw the rejections of the pending claims.

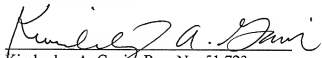
Applicant submits that this Response does not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner because all of the elements and their relationships were either earlier claimed or inherent in the claims as examined. This Response should therefore allow for immediate action by the Examiner.

Applicant also submits that entry of this Response would place the present application in better form for appeal, should the Examiner dispute the patentability of any of the pending claims.

The Examiner is invited to contact the undersigned at (212) 408-2529 if any additional information or assistance is required.

Applicant believes that no additional fee is due in connection with the filing of this Response. However, Applicant authorizes, in the Fee Transmittal Form (submitted herewith in duplicate) the Director to charge payment of any additional fees or credit any overpayment associated with this Response to Deposit Account No. 02-4377.

Respectfully submitted,



Kimberley A. Gayle, Reg. No. 51,723
Agent for Applicant

BAKER BOTTS L.L.P.
Customer No. 28763
30 Rockefeller Plaza
New York, NY 10112
(212) 408-2500